

This letter discusses limitations on the meaning of “occasional sales.” See 86 Ill. Adm. Code 130.110. (This is a GIL.)

May 4, 2007

Dear Xxxxx:

This letter is in response to your letter dated December 16, 2006, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings (“PLRs”) are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department’s regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter (“GIL”) is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at [www.ILTAX.com](http://www.ILTAX.com) to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

I need a ruling on these sales I have been making.

In the summer during melon season, I go to Indiana and get a load of melons, watermelons and cantaloupe. I set them up in my front yard with a container so that people can come by and make their purchases.

I pay Indiana sales tax when I make my purchase and I give the profits I make to various local projects, though I do not advertise such. This year the \$150 I made went to the ABC High School Cheerleaders.

My accountant said that this falls under the occasional sales rule, but I need an official ruling to give answer [sic] to those who have raised the question.

## **DEPARTMENT’S RESPONSE**

The Department’s regulation at 86 Ill. Adm. Code 130.110 discusses what is meant by an “occasional sale”. Occasional sales are sales in which the items being sold were first purchased for use by the seller and are no longer needed. An example of an occasional sale would be when a

retailer disposes of machinery that he has used and no longer needs, and which he does not otherwise engage in selling. See, Section 130.110(b).

Under the Department's regulations for sales by exclusively charitable, educational, and government organizations, some occasional selling is allowed to be done tax-free. See 86 Ill. Adm. Code 130.2005. For purposes of this exemption, "occasional" means not more than twice in any calendar year. Further, the regulations provide that where more than two events are held in any calendar year, the organization or institution may select which two events held within that year will be considered exempt. This "two per year" rule applies to occasional dinners and similar fund-raisers made by an exempt organization that has obtained a tax exemption number (an "E" number) from the Department. Thus, an organization with an "E" number, such as a church or charity, can hold two rummage sales per calendar year without incurring Retailers' Occupation Tax. If exempt organizations make additional sales, the sales are taxable. When this is the case, the exempt organization must register with the Department as retailers, file returns and remit tax. They should also provide their suppliers with Certificates of Resale when making purchases for resale. Illinois law requires a Certificate of Resale to contain the information set out in 86 Ill. Adm. Code 130.1405.

A vendor who is not making an "occasional sale" or a tax-free sale as an exempt organization with an "E" number makes taxable sales. If items are purchased for the purpose of resale, the seller should be registered under the Retailers' Occupation Tax Act and collect and remit sales tax, including any applicable local tax, even if he only makes one sale. This is because a seller who purchases items for resale would be holding himself out as being engaged in selling tangible personal property at retail and incurs Retailers' Occupation Tax liability. See 86 Ill. Adm. Code 130.110(f). The vendor must pay State sales tax (6.25% for general merchandise or 1% for food, drugs and medical appliances) and any applicable local taxes.

Under Illinois sales tax law, a retailer that purchases tangible personal property for purposes of resale from an out-of-State vendor and pays the other state's tax in error rather than providing a resale certificate will still owe tax in Illinois when he sells the tangible personal property in Illinois. However the Illinois retailer would get credit against his or her sales tax obligations for taxes properly due and paid in another state.

If you require additional information, please visit our website at [www.ILTAX.com](http://www.ILTAX.com) or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

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